

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Brian B. Egan *et al.*

Examiner: Clemence S. Han

Serial No. 09/750,766

Art Unit: 2616

Filed: 12/28/2000

For: **VOICE OPTIMIZATION IN A NETWORK HAVING VOICE OVER INTERNET  
PROTOCOL COMMUNICATION DEVICES**

Mail Stop Petitions

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Sir:

**APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705**

In response to the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed July 20, 2009, Applicant files this Application for Patent Term Adjustment pursuant to 37 CFR 1.705. Applicant concurrently submits the \$200.00 fee for such application as set forth in 37 CFR § 1.18(e). In addition, as this application requests reinstatement of part of the period of adjustment reduced pursuant to 37 CFR § 1.704(b), Applicant also submits the appropriate fee of \$400.00 as set forth in 37 CFR § 1.18(f). If any additional fees are required in association with this response, the Director is hereby authorized to charge them to Deposit Account 14-1315, and consider this a petition therefor.

## **STATEMENT OF FACTS**

1. Applicant respectfully submits that the correct Patent Term Adjustment is 974 days, not 540 days. The basis for this determination is that the correct amount of delay due to the Patent Office under 37 CFR § 1.702 is 1005 days, not 847 days, and the correct amount of delay due to the Applicant under 37 CFR § 1.704 is 31 days, not 307 days as calculated by the Patent Office.
2. The Patent Office issued a Notice of Allowance on July 20, 2009 (see Appendix A). As part of the Notice of Allowance, the Patent Office also issued a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) of 540 days (see Appendix A).
3. A copy of the Patent Term Adjustment History on PAIR for the current application, Application Serial No. 09/750,766 is attached as Appendix B. The Patent Term Adjustment History calculated the total period of examination delay due to the Patent Office as 847 days and the total amount of delay due to Applicant's delay as 307 days. The 540 days of Patent Term Adjustment was calculated by subtracting the 307 day delay allegedly due to the Applicant from the 847 day delay due to the Patent Office.
4. The delay due to the Patent Office as calculated is 847 days. This includes 830 days of delay past the 14 month period allocated for a first office action, and a 17 day delay because the non-final action mailed February 25, 2005 was 17 days past the 4 month period allocated for a reply to Applicant's Response mailed October 8, 2004 (see Appendix B). The correct amount of delay due to the Patent Office is 158 days longer than 847, for a total of 1005 days, due to the 158 day delay in responding to the response filed by Applicant on May 23, 2006, as set forth more fully below.
5. Applicant disagrees with the 307 day delay period attributed to Applicant by the Patent Office. The correct amount of delay due to Applicant is 31 days.

6. The Patent Office attributed 31 days of delay to Applicant due to a request for a one-month extension of time filed with a Response filed on October 8, 2004. Applicant does not dispute this 31 day delay.

7. The Patent Office attributed 276 days of delay to Applicant beginning with a final rejection mailed August 25, 2006. Applicant disputes that any of this delay was due to Applicant.

8. The final rejection mailed August 25, 2006 was mailed to the wrong address (see Appendix C). On April 6, 2006, a power of attorney and change of correspondence address to Withrow & Terranova, PLLC, Customer Number 27820, P.O. Box 1287, Cary, NC 27512 was filed (see Appendix D). However, the August 25, 2006 final rejection was mailed to Mintz Levin Cohn Ferris Glovsky & Popeo, 666 Third Avenue, New York, NY 10017 (see Appendix C). Since the August 25, 2006 final rejection was mailed to the wrong address, Applicant did not receive the final rejection. Since Applicant did not receive the final rejection mailed August 25, 2006 by the Patent Office to the wrong address, Applicant, in spite of all due care, was unable to respond to the final rejection within three months.

9. Applicant's representative, John R. Witcher, III, became aware of the final rejection due to a routine check of PAIR in February 2007. Mr. Witcher contacted Examiner Clemence Han in February 2007 and asked Examiner Han to re-mail the final rejection and restart the period for reply since the Patent Office had mailed the final rejection to the wrong address. Examiner Han did so, with the final rejection being re-mailed February 28, 2007, with a 3 month period for reply (see Appendix E).

10. Applicant filed a Response on May 23, 2006. The Patent Office did not send an office action replying to the May 23, 2006 response to the correct address until February 28, 2007. The 4 month period for the Patent Office to respond to a reply under 35 U.S.C. 154 ended on September 23, 2006. The period of time from September 23, 2006 to February 28, 2006 is 158 days. This delay was due to the Patent Office's mistake in mailing the final rejection to the

wrong address on August 25, 2006. Thus, this 158 day delay should be added to the 847 day delay calculated by the Patent Office for a total delay to the Patent Office of 1005 days.

11. Applicant filed a response to the remailed final rejection on April 30, 2007, the first business day after the two month date of the final rejection remailed February 28, 2007. When Applicant did not receive an Advisory Action prior to the six month date from the final rejection, Applicant filed a Notice of Appeal on August 28, 2007. Thus, any delay from the August 25, 2006 final rejection that was mailed to the wrong address until the Notice of Appeal filed on August 28, 2007 was due to the Patent Office's mistake in mailing to the wrong address, and was unavoidable by the Applicant. During that period of time, Applicant did not fail to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 CFR § 1.704. Thus, the 276 day delay attributed to the Applicant for this period of time (see Appendix B) should be subtracted from the 307 days, leaving the delay due to Applicant as 31 days.

12. The patent issuing from the present application, Serial No. 09/750,766, is not subject to a terminal disclaimer.

13. Since, for the reasons set forth above, the correct total time of delay due to the Patent Office is 1005 days and the correct amount of delay due to Applicant is 31 days, the correct Patent Term Adjustment is 974 days. Applicant respectfully requests that the Patent Term Adjustment be corrected to 974 days.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



John R. Witcher, III  
Registration No. 39,877  
100 Regency Forest Drive, Suite 160  
Cary, NC 27518  
Telephone: (919) 238-2300

Date: October 20, 2009  
Attorney Docket: 7000-526

## APPENDIX A



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P O Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

## NOTICE OF ALLOWANCE AND FEE(S) DUE

27820

7590

07/20/2009

WITHROW & TERRANOVA, P.L.L.C.  
100 REGENCY FOREST DRIVE  
SUITE 160  
CARY, NC 27518

EXAMINER

HAN, CLEMENCE S

ART UNIT

PAPER NUMBER

2416

DATE MAILED: 07/20/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/750,766

12/28/2000

Brian B. Egan

7000-526

8660

TITLE OF INVENTION: VOICE OPTIMIZATION IN A NETWORK HAVING VOICE OVER THE INTERNET PROTOCOL COMMUNICATION DEVICES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$0	\$0	\$1510	10/20/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

## HOW TO REPLY TO THIS NOTICE:

## I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

**PART B - FEE(S) TRANSMITTAL**

Complete and send this form, together with applicable fee(s), to: **Mail** Mail Stop ISSUE FEE  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, Virginia 22313-1450**  
 or **Fax** (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

27820 7590 07/20/2009

**WITHROW & TERRANOVA, P.L.L.C.**  
 100 REGENCY FOREST DRIVE  
 SUITE 160  
 CARY, NC 27518

**Certificate of Mailing or Transmission**  
 I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/750,766 12/28/2000 Brian B. Egan 7000-526 8660

TITLE OF INVENTION: VOICE OPTIMIZATION IN A NETWORK HAVING VOICE OVER THE INTERNET PROTOCOL COMMUNICATION DEVICES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional NO \$1510 \$0 \$0 \$1510 10/20/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
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HAN, CLEMENCE S 2416 370-389000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.  
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,  
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee  
☐ Publication Fee (No small entity discount permitted)  
☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_ Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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Address: COMMISSIONER FOR PATENTS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,766	12/28/2000	Brian B. Egan	7000-526	8660

27820 7590 07/20/2009

WITHROW & TERRANOVA, P.L.L.C.  
100 REGENCY FOREST DRIVE  
SUITE 160  
CARY, NC 27518

EXAMINER

HAN, CLEMENCE S

ART UNIT PAPER NUMBER

2416

DATE MAILED: 07/20/2009

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 540 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 540 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

<b>Notice of Allowability</b>	<b>Application No.</b> 09/750,766 <b>Examiner</b> CLEMENCE HAN	<b>Applicant(s)</b> EGAN ET AL. <b>Art Unit</b> 2416
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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 04/14/2009.
2. ☒ The allowed claim(s) is/are 1-24 now renumbered as 1-4, 6-8, 5 and 9-24 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

<b>Attachment(s)</b> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/06), Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date _____ 7. <input type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____
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## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. Claim 1-24 are allowed.
2. The following is an examiner's statement of reasons for allowance: The present invention is directed to a method for voice optimization in a packet switched network. The prior arts in the record fail to teach or make obvious to a method comprising setting default parameters for the end-point devices with respect to choice of preferred CODEC, number of voice samples per packet, and jitter buffer size, and performing one or more tests to determine an optimum configuration for the end-point devices within a structure of the claim. These features are claimed in the independent claims 1, 14 and 20 and render them allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLEMENCE HAN whose telephone number is (571)272-3158. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571) 272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ricky Ngo/  
Supervisory Patent Examiner, Art Unit 2416

/C. H./  
Examiner, Art Unit 2416

## APPENDIX B

09/750,766	VOICE OPTIMIZATION IN A NETWORK HAVING VOICE OVER THE INTERNET PROTOCOL COMMUNICATION DEVICES	10-20-2009::12:37:27
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/750,766

Filing or 371(c) Date:	12-28-2000	USPTO Delay (PTO) Delay (days):	847
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	307
Post-Issue Petitions (days):	+0	Total PTA (days):	540
USPTO Adjustment(days):	+0	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
07-20-2009	Mail Notice of Allowance		
07-19-2009	Notice of Allowance Data Verification Completed		
07-19-2009	Case Docketed to Examiner in GAU		
07-19-2009	Document Verification		
05-06-2009	Appeal Brief Review Complete		
05-06-2009	Date Forwarded to Examiner		
04-14-2009	Appeal Brief Filed		
04-14-2009	Request for Extension of Time - Granted		
01-23-2009	Request for Refund		
12-15-2008	Notice of Appeal Filed		
10-06-2008	Case Docketed to Examiner in GAU		
10-06-2008	Mail Final Rejection (PTOL - 326)		
10-01-2008	Final Rejection		
07-18-2008	Date Forwarded to Examiner		
06-12-2008	Response after Non-Final Action		
03-19-2008	Mail Non-Final Rejection		
03-17-2008	Non-Final Rejection		
01-11-2008	Date Forwarded to Examiner		
01-11-2008	Date Forwarded to Examiner		
11-28-2007	Request for Continued Examination (RCE)		
01-11-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
11-28-2007	Request for Extension of Time - Granted		
11-28-2007	Workflow - Request for RCE - Begin		
10-01-2007	Request for Refund		
02-06-2007	Correspondence Address Change		
02-07-2007	Change in Power of Attorney (May Include Associate POA)		
08-28-2007	Notice of Appeal Filed		276
08-28-2007	Request for Extension of Time - Granted		
08-30-2007	Mail Advisory Action (PTOL - 303)		
08-28-2007	Advisory Action (PTOL-303)		
08-23-2007	Date Forwarded to Examiner		

04-30-2007	Amendment after Final Rejection		
02-28-2007	Mail Notice of Restarted Response Period		
02-26-2007	Letter Restarting Period for Response (i.e. Letter re: References)		
08-25-2006	Mail Final Rejection (PTOL - 326)		
08-21-2006	Final Rejection		
06-07-2006	Date Forwarded to Examiner		
05-23-2006	Response after Non-Final Action		
03-21-2006	Case Docketed to Examiner in GAU		
02-27-2006	Mail Non-Final Rejection		
02-21-2006	Non-Final Rejection		
01-03-2006	Date Forwarded to Examiner		
12-23-2005	Appeal Brief Filed		
11-10-2005	Notice of Appeal Filed		
10-12-2005	Case Docketed to Examiner in GAU		
08-10-2005	Mail Final Rejection (PTOL - 326)		
08-08-2005	Final Rejection		
06-02-2005	Date Forwarded to Examiner		
05-23-2005	Response after Non-Final Action		
02-25-2005	Mail Non-Final Rejection	17	
02-22-2005	Non-Final Rejection		
12-12-2004	IFW TSS Processing by Tech Center Complete		
12-12-2004	Date Forwarded to Examiner		
10-08-2004	Response after Non-Final Action		31
10-08-2004	Request for Extension of Time - Granted		
10-08-2004	Workflow incoming amendment IFW		
06-07-2004	Mail Non-Final Rejection	830	
06-01-2004	Non-Final Rejection		
05-10-2004	Case Docketed to Examiner in GAU		
04-23-2004	Correspondence Address Change		
04-22-2004	Correspondence Address Change		
03-09-2001	Case Docketed to Examiner in GAU		
02-13-2001	Application Dispatched from OIPE		
02-12-2001	Correspondence Address Change		
01-17-2001	IFW Scan & PACR Auto Security Review		
12-28-2000	Initial Exam Team nn		

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## APPENDIX C



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,766	12/28/2000	Brian B. Egan	NTL-3.2.172/3666	8660

35437 7590 08/25/2006

MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO  
666 THIRD AVENUE  
NEW YORK, NY 10017

EXAMINER

HAN, CLEMENCE S

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/750,766	EGAN ET AL.	
	Examiner	Art Unit	
	Clemence Han	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
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- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-18 and 20-23 is/are rejected.
- 7) ☒ Claim(s) 7-9, 19 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | 5) <input type="checkbox"/> Paper No(s)/Mail Date _____                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 4) <input type="checkbox"/> Paper No(s)/Mail Date _____                                 | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 17 is objected to because of the following informalities: The limitation “a packet loss measurement tool” in the last line should be “the packet loss measurement tool”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claim 1-6, 10-18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroll (US 6,700,895) in view of Welin (US 6,975,629).

Regarding to claim 1, 14 and 20, Kroll teaches a method of voice optimization in a packet switched network, comprising: initializing default parameters for end-point devices on a network with respect to jitter buffer size 210; measuring performance parameters of the network 212-280; and evaluating whether the measured performance parameters signify that a connection to the network is below a desired level of operation 194 and, if so, adjusting the default parameters for the end-point devices based on the evaluating 196. Kroll, however, does not teach initializing default parameters with respect to choice of preferred CODEC and number of voice samples per packet. Welin teaches initializing

default parameters with respect to choice of preferred CODEC and number of voice samples per packet (Column 18 Line 4-14). It would have been obvious to one skilled in the art to modify to initialize default parameters with respect to choice of preferred CODEC and number of voice samples per packet as taught by Welin in order to optimize the system in real time (Column 18 Line 20-25).

Regarding to claim 2, 18 and 23, Kroll teaches the adjusting includes performing functions that are selected from a group consisting of re-negotiating a CODEC connection, re-setting of parameters for the packet size and re-setting the jitter buffer 196.

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Regarding to claim 4, 6, 16, 17 and 22, Kroll teaches the measuring is performed with at least one tool selected from a group consisting of a ping tool, a network trace tool and a packet loss measurement tool (Column 2 Line 36-39).

Regarding to claim 10, Kroll teaches measuring and evaluating existing performance parameters with respect to quality of connection 212-280, the initializing being based on the evaluating 196.

Regarding to claim 12, Kroll teaches evaluating the measured performance parameters with respect to quality of connection 212-280 and performing the adjusting as a result of the evaluating 196.

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***Allowable Subject Matter***

4. Claim 7-9, 19 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments filed on May 23, 2006 have been fully considered but they are not persuasive.

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7. In response to page 9, the applicant argues that Welin does not teach the choice of number of voice samples per packet. Welin teaches selection of coder, therefore selection of the frame size of the coder (Column 18 Line 7-14). The frame size is directly linked to the number of voice samples per packet (see the instant Specification page 7 line 7-12). Therefore, Welin teaches the choice of number of voice samples per packet. The applicant, further, argues that even though Welin teaches the selection of coders at run time, Welin does not teach initializing default preferred codec. Welin teaches adapting the selection of coder at runtime and the step of selecting the initial coder would be obvious to one of ordinary skill in the art.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to the invention in general.

U.S. Patent 6,356,545 to Vargo et al.

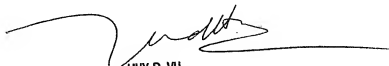
U.S. Patent 6,980,569 to Beyda et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clemence Han whose telephone number is (571) 272-3158. The examiner can normally be reached on Monday-Thursday 7 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

C. H.  
Clemence Han  
Examiner  
Art Unit 2616



HUY D. VU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

## APPENDIX D

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APR 06 2006

## Withrow & Terranova

Professional Limited Liability Company

Attorneys At Law  
Registered Patent Attorneys

*A High Technology Patent Practice*

### FACSIMILE TRANSMITTAL SHEET

TO:	Examiner Clemence S. Han	FROM:	Benjamin S. Withrow
COMPANY:	USPTO - Art Unit 2668	DATE:	April 6, 2006
FAX NUMBER:	571-273-8300	TOTAL NO. OF PAGES INCLUDING COVER:	5
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	7000-526
RE:	Power of Attorney	YOUR REFERENCE NUMBER:	09/750,766

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ ORIGINAL TO FOLLOW

#### NOTES/COMMENTS:

Please find attached the following items:

- 1) Submission of Power of Attorney
- 2) Power of Attorney
- 3) Change of Correspondence Address

NOTE: The information contained in this transmission is privileged and confidential and intended ONLY for the individual or entity named above. If you should receive this transmission in error, please notify our office and return to the below address via the U.S. Postal Service.

201 SHANNON OAKS CIRCLE, SUITE 200  
CARY, NC 27511

PH: (919) 654-4520

FAX: (919) 654-4521

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APR 06 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Egan *et al.*

For: **VOICE OPTIMIZATION IN A NETWORK HAVING VOICE OVER  
INTERNET PROTOCOL COMMUNICATION DEVICES**

Filed: 12/28/2000

Serial No. 09/750,766

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

SUBMISSION OF POWER OF ATTORNEY

Sir:

Please enter the enclosed Power of Attorney and address all communications and telephone calls to Withrow & Terranova, P.L.L.C., Customer Number 27820, P.O. Box 1287, Cary, North Carolina 27512. A change of correspondence form is enclosed for your convenience in making this change of record. Also please change the Attorney Docket Number to 7000-526.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:

Benjamin S. Withrow  
Registration No. 40,876  
Customer No. 27820  
P.O. Box 1287  
Cary, NC 27512

BSW/jjra  
Enclosure

Date: April 6, 2006  
File No.: 7000-526

CERTIFICATE OF TRANSMISSION	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: Clemence S. Han	App Unit: 2668 Fax: 571-273-8300
Name of Sender <i>Benjamin S. Withrow</i>	
Signature <i>Benjamin S. Withrow</i>	
Date of Transmission <i>June 6, 2006</i>	

PATENT/DOCKET NO. 7000-526  
CUSTOMER NO. 27820

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 06 2006

In Re Application of: Egan *et al.*

Attorney Docket No. 7000-526

Serial No.: 09/750,766

Filed: 12/28/2000

Group Art Unit: 2668

Title: VOICE OPTIMIZATION IN A  
NETWORK HAVING VOICE  
OVER INTERNET PROTOCOL  
COMMUNICATION DEVICES

Examiner: Clemence S. Han

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

POWER OF ATTORNEY FOR  
PATENT APPLICATION

Nortel Networks Limited, a Canadian corporation having principal offices at:

Nortel Networks Limited  
2351 Boulevard Alfred-Nobel  
St. Laurent, Quebec H4S 2A9, Canada

the owner by assignment of the entire right, title and interest to the invention for VOICE OPTIMIZATION IN A NETWORK HAVING VOICE OVER INTERNET PROTOCOL COMMUNICATION DEVICES, by Brain B. Egan *et al.*, and in and to the application for patent and any Letters Patent, whether domestic or foreign, that may issue thereon, by virtue of the assignment (check as applicable):

- ☐ Recorded Concurrently Herewith  
☒ Recorded on 12/28/2000  
☒ Recorded at Reel 011417 Frame 0079  
☐ Copy Attached

hereby appoints the following attorneys and/or agents to prosecute this application and transact all business in the Patent and Trademark Office connected therewith:

Customer Number 27820, including Benjamin S. Withrow (Reg. No. 40,876), Steven N. Terranova (Reg. No. 43,185), and Richard C. Bevins (Reg. No. 51,468);

Rev. February 12, 2003

its attorneys and/or agents with full power of substitution and revocation, to prosecute all domestic and foreign patent applications, including PCT and EPO filings, relating to said invention and to transact all business connected therewith, including signing of all papers on its behalf and making alterations and amendments.

Please address all correspondence and telephone calls regarding this application to:

**Withrow & Terranova, P.L.L.C., P.O. Box 1287, Cary, NC 27512, (919) 654-4520**

The undersigned is the representative for the Assignee of the entire right, title, and interest in the patent application identified above, and is authorized to act on behalf of the Assignee.

April 5, 2006  
Date

NORTEL NETWORKS LIMITED

Kevin A. Sembrat  
Kevin A. Sembrat, Esq.  
IP Counsel

Rev. February 12, 2003

TOTAL P.03

<p align="center"><b>CHANGE OF CORRESPONDENCE ADDRESS Application</b></p> <p>Address to: Commissioner for Patents PO Box 1450 Alexandria, VA 22313-1450</p>	Application Number	09/750,766
	Filing Date	12/28/2000
	First Named Inventor	Brain B. Egan
	Group Art Unit	2668
	Examiner Name	Clemence S. Han
	Attorney Docket Number	7000-526

RECEIVED  
CENTRAL FAX CENTER  
APR 06 2006

Please change the Correspondence Address for the above-identified application to:

☒ Customer Number 27820 → Place Customer  
Number Bar Code  
Label here

*Type Customer Number here*

**OR**

☐ Firm or Individual Name

Address

Address

City State ZIP

Country

Telephone Fax

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the :

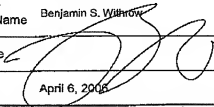
☐ Applicant.

☐ Assignee of record of the entire interest. Certificate under 37 CFR 3.73(b) is enclosed.

☒ Attorney or agent of record, Reg. No. 40,876.

☐ Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number

Typed or Printed Name Benjamin S. Withrow

Signature 

Date April 6, 2006

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ \*Total of forms are submitted.

Burden Hour Statement: This form is estimated to take 6.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, USPTO, PO Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

## APPENDIX E



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,766	12/28/2000	Brian B. Egan	7000-526	8660

27820 7590 02/28/2007  
WITHROW & TERRANOVA, P.L.L.C.  
100 REGENCY FOREST DRIVE  
SUITE 160  
CARY, NC 27518

EXAMINER
----------

HAN, CLEMENCE S

ART UNIT	PAPER NUMBER
----------	--------------

2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/750,766

Examiner

Clemence Han

Applicant(s)

EGAN ET AL.

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

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Paper No(s)/Mail Date \_\_\_\_\_
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## **DETAILED ACTION**

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5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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